

# Protection of the Environment Operations (Clean Air) Regulation 2002

[2002-642]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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New South Wales

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# Protection of the Environment Operations (Clean Air) Regulation 2002



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

BOB DEBUS, M.P., Minister for the Environment

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Clean Air) Regulation 2002*.

### 2 Commencement

This Regulation commences on 1 September 2002.

#### Note—

This Regulation replaces the *Clean Air (Domestic Solid Fuel Heaters) Regulation 1997* and the *Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997* which are repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions and notes

(1) In this Regulation:

**the Act** means the *Protection of the Environment Operations Act 1997*.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Domestic solid fuel heaters

### 4 Interpretation and application of Part

(1) In this Part:

**central heating appliance** has the meaning given to it in Standard 4013.

**certificate of compliance** means a certificate issued by a body approved by the EPA, being a certificate certifying that all heaters of a particular model comply with Standard 4013.

**certificate of exemption** means a certificate issued by a body approved by the EPA, being a certificate exempting all heaters of a particular model from compliance with Standard 4013.

**heater**—see subclause (2).

**model** of heater means a particular design of heater made by a particular manufacturer.

**sell**—see the Dictionary to the Act.

**Standard 4013** means the document entitled “AS/NZS 4013:1999, *Domestic solid fuel burning appliances—Method for determination of flue gas emission*”, published by Standards Australia and as in force from time to time.

- (2) This Part applies to any solid fuel burning appliance that is designed, manufactured or adapted for domestic use (referred to in this Part as a **heater**).
- (3) This Part applies to the wholesale and retail sale of heaters, other than heaters of the following kind:
  - (a) any masonry appliance built on site,
  - (b) any central heating appliance,
  - (c) any cooking stove appliance as defined in Standard 4013,
  - (d) any appliance intended for use solely for heating water,
  - (e) any appliance intended for use solely for distributing heat through ducts.

## **5 Requirement for certificates of compliance**

- (1) A person must not sell a heater to any other person unless:
  - (a) the heater is marked in accordance with Standard 4013, and
  - (b) a certificate of compliance is in force in relation to heaters of the same model as that heater, and
  - (c) in the case of a sale to a person whose business includes the wholesale or retail sale of heaters, a copy of the certificate is given to the purchaser.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (2) Subclause (1) (c) does not require a copy of a certificate to be given to a person to whom a copy of the certificate has previously been given.
- (3) This clause does not apply to a heater of a model for which a certificate of exemption is in force.

## 6 Interference with heaters

- (1) A person must not:
  - (a) alter the structure, exhaust system or inlet air system of any heater of a model to which a certificate of compliance or certificate of exemption relates, or
  - (b) mark on a heater that it complies with Standard 4013 if the heater is not of a model that is the subject of a certificate of compliance.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (2) This clause extends to any person who causes or permits the doing of a thing that is prohibited under this clause.
- (3) Nothing in this clause makes it an offence for a person to carry out any repair work on any heater (including repairs or alterations in accordance with a notice under section 96 of the Act).

## Part 3 Motor vehicles and motor vehicle fuels

### Division 1 Interpretation

#### 7 Definitions

In this Part:

**ADR** or **Australian Design Rule** means a national standard under the [Motor Vehicle Standards Act 1989](#) of the Commonwealth as in force from time to time.

**Approved Methods Publication** means the document entitled “Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales” prepared by the EPA and published in the Gazette, as in force from time to time.

**diesel engine** means an engine that is designed to operate on automotive diesel fuel.

**goods vehicle** means a motor vehicle constructed primarily for the carriage of goods, but does not include a special purpose motor vehicle.

**manufacturer’s gross vehicle mass**, in relation to a vehicle, means the maximum loaded mass of the vehicle:

- (a) specified by the manufacturer, or
- (b) specified by the Roads and Traffic Authority in circumstances in which:
  - (i) the manufacturer is unknown, or
  - (ii) the manufacturer has failed to specify a maximum loaded mass for the vehicle, or
  - (iii) the manufacturer has specified a maximum loaded mass for the vehicle, but the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate for the vehicle.

**motor bus** means a passenger vehicle that seats more than 9 adult persons (including the driver).

**motor cycle** includes a motor tricycle and a motor cycle combination.

**passenger vehicle** means a motor vehicle constructed primarily for the carriage of persons, but does not include a motor cycle.

**petrol** has the same meaning as in section 154 (1) of the Act.

**registered**, in relation to a motor vehicle, means registered under the [Road Transport \(Vehicle Registration\) Act 1997](#).

**spark-ignition engine** means an engine that is designed to operate on petrol, liquefied petroleum gas or compressed natural gas, being an engine that has its air-fuel mixture ignited by means of an electrical spark.

**special purpose motor vehicle** means a fork lift truck or motor vehicle constructed principally for off-road agricultural use or for use in road or building site construction work, and includes:

- (a) a tractor, harvester, header, thresher, swather, baler, cuber, loader, digger, bulldozer, excavator, grader, scraper and roller, and
- (b) a mobile crane the engine of which is used for the purpose of both lifting loads and propelling the vehicle,

but does not include any vehicle constructed on a chassis of a type normally used in the construction of a goods vehicle.

**Test Method**, together with a number, means a test method of that number prescribed by the Approved Methods Publication.

## Division 2 Air impurities

### 8 Definition of excessive air impurities: section 154

- (1) This clause applies to motor vehicles propelled by a spark-ignition or diesel engine.
- (2) A motor vehicle emits excessive air impurities as referred to in section 154 (2) (a) of the Act if, when in operation, it emits air impurities in excess of such a standard of concentration that air impurities are visible for a continuous period of more than 10 seconds when determined in accordance with Test Method 31.
- (3) A motor vehicle emits excessive air impurities as referred to in section 154 (2) (b) of the Act if, when tested in accordance with Test Method 31, it emits air impurities in excess of an amount per test that results in air impurities being visible for a continuous period of more than 10 seconds.

### 9 Motor vehicles emitting excessive air impurities

- (1) An owner of a motor vehicle is guilty of an offence if the vehicle emits excessive air impurities while being used.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence under this clause if the owner proves that the motor vehicle was at the time of the commission of the offence a stolen motor vehicle or a motor vehicle illegally taken or used.
- (3) It is a defence to a prosecution for an offence under this clause if the defendant proves that the motor vehicle:
  - (a) was constructed or has been modified solely for use in motor racing or off-road motor sport, and
  - (b) was not registrable under the [Road Transport \(Vehicle Registration\) Act 1997](#).
- (4) For the purposes of this clause, a motor vehicle **emits excessive air impurities** if it emits air impurities in the circumstances described in section 154 (2) of the Act.

## Division 3 Prescribed anti-pollution devices

### 10 Prescribed anti-pollution devices: section 154

For the purposes of the definition of **prescribed anti-pollution device** in section 154 (1) of the Act, each of the following devices is prescribed as a device that is designed or intended to minimise air pollution caused by motor vehicles:

- (a) an **evaporative emission control system**, that is, a system of devices and equipment that is designed to trap the evaporative emissions from a motor vehicle's



fuel tank and fuel supply system and so restrict their release to the atmosphere,

- (b) a ***fuel supply system***, that is, a system of devices and equipment that is designed:
  - (i) to convey fuel to a direct injection engine, or
  - (ii) to convey fuel to an engine's air intake system, to mix the fuel with air and to convey the mixture of fuel and air into the engine,
- (c) an ***engine ignition system***, that is, a system of devices and equipment that is designed to ignite the fuel, or the mixture of fuel and air, in a motor vehicle's engine,
- (d) an ***engine management system***, that is, a system of devices and equipment that is designed to control the operation of a motor vehicle's fuel supply system and engine ignition system,
- (e) a ***smoke-limiting throttle control system***, that is, a system of devices and equipment that is designed to limit the maximum rate at which fuel can go into a diesel-engined motor vehicle and so reduce the amount of smoke emitted by the motor vehicle while it is being accelerated,
- (f) an ***exhaust gas recirculation system***, that is, a system of devices and equipment that is designed to convey exhaust gases from a spark ignition engine to the engine's air intake system for the purpose of reducing the amount of oxygen in the mixture of air and fuel going into the engine and so reducing the amount of oxides of nitrogen emitted by the engine,
- (g) a ***catalytic converter system***, that is, a system of devices and equipment that is designed to induce a catalytic reaction between the various exhaust gases that are emitted from a motor vehicle's engine and so reduce the emission of air impurities by the motor vehicle,
- (h) a ***complying exhaust pipe***, that is, an exhaust pipe that complies with the requirements of clause 11.

#### **11 Fitting of certain anti-pollution devices to be compulsory: sections 156 and 161 and clause 15**

A motor vehicle that is propelled by a diesel engine and that has a manufacturer's gross vehicle mass of more than 4.5 tonnes must be fitted with:

- (a) in the case of a motor vehicle for which, as at the date of its manufacture, an Australian Design Rule prescribed requirements with respect to the exhaust pipe to be fitted to it, a vertical exhaust pipe that complies with those requirements, or
- (b) in any other case, an exhaust pipe:
  - (i) that terminates 150 millimetres or more above the highest part of the vehicle's

cab, and

- (ii) whose exhaust vent is directed upwards (within 30 degrees of the vertical) and away from the nearside of the vehicle.

## **12 Automatic exemption of certain vehicles from clause 11**

(1) Clause 11 does not apply to:

- (a) any motor vehicle that is registered outside New South Wales, or
- (b) any motor vehicle that is sold in New South Wales for delivery outside New South Wales.

(2) Clause 11 does not apply to the following motor vehicles sold or registered in New South Wales:

- (a) a motor vehicle that was manufactured before 1 January 1976,
- (b) a motor vehicle that was ordered from the manufacturer before 1 July 1974,
- (c) a motor bus that was manufactured before 1 January 1977,
- (d) a special purpose motor vehicle,
- (e) a motor vehicle used exclusively for the control of bush fires,
- (f) a motor vehicle fitted with hydraulically operated elevating work platforms,
- (g) a motor vehicle used exclusively to fuel aircraft,
- (h) a motor vehicle having a diesel engine of a type certified in writing by the EPA as not requiring an exhaust pipe of the kind referred to in clause 11,
- (i) a motor vehicle manufactured before 1 January 2007 of a model certified in writing by the EPA as complying with ADR 80/01,
- (j) a motor vehicle manufactured on or after 1 January 2007 in compliance with ADR 80/01.

## **13 EPA may exempt rural table-top trucks from clause 11**

(1) On application by the owner of a motor vehicle, the EPA may, by instrument in writing, exempt the vehicle from the operation of clause 11 if satisfied that the vehicle:

- (a) is a rigid table-top truck, and
- (b) is used predominantly to transport hay or other flammable farm produce, and
- (c) is usually garaged on a farm.

- (2) An application for such an exemption must be in the approved form and must be accompanied by a fee of \$50.
- (3) An exemption under this clause may be granted unconditionally or subject to conditions.
- (4) An exemption under this clause applies only while the motor vehicle to which it relates is owned by the person in whose name the exemption was granted.
- (5) A person who, in relation to any application under this clause, wilfully makes any statement or furnishes any information that is false or misleading in a material respect is guilty of an offence.

Maximum penalty: 100 penalty units in the case of a corporation, or 10 penalty units in the case of an individual.

- (6) Clause 11 does not apply to a vehicle to which an exemption under this clause relates, but only so long as any conditions to which the exemption is subject are complied with.
- (7) On payment of a fee of \$25, the EPA may issue a replacement instrument of exemption if it is satisfied that the instrument it replaces has been lost or destroyed.

## **Division 4 Use and maintenance of motor vehicles**

### **14 Maintenance of vehicles: section 159 and clause 16**

For the purposes of section 159 of the Act and clause 16, a motor vehicle to which clause 11 applies must be maintained so that the exhaust pipe of the vehicle is free of holes (other than holes necessary for the effective operation of the exhaust system).

### **15 Use of motor vehicle without prescribed anti-pollution device prohibited**

- (1) An owner of a motor vehicle who uses the motor vehicle, or causes or allows it to be used, is guilty of an offence if:
  - (a) this Regulation requires motor vehicles of the class to which it belongs to be fitted with a prescribed anti-pollution device, and
  - (b) the vehicle is not fitted in the prescribed manner with such a device.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence under this clause if the defendant proves that, at the time the offence was committed:
  - (a) the defendant had reasonable grounds to believe, and did believe, that the motor vehicle was fitted with every prescribed anti-pollution device required by this

Regulation to be fitted to the motor vehicle, and

(b) the defendant took all reasonable steps to ensure that every such device was fitted in the prescribed manner.

(3) It is a defence to a prosecution for an offence under this clause if the defendant proves that the motor vehicle:

(a) was constructed or has been modified solely for use in motor racing or off-road motor sport, and

(b) was not registrable under the *Road Transport (Vehicle Registration) Act 1997*.

(4) In this clause, **prescribed anti-pollution device** has the same meaning as in section 154 of the Act.

#### **16 Maintenance, service and adjustment of motor vehicles**

(1) An owner of a motor vehicle who uses the motor vehicle, or causes or allows it to be used, is guilty of an offence if:

(a) this Regulation requires motor vehicles of the class to which it belongs to be serviced, maintained, or adjusted in a specified manner, and

(b) the vehicle has not been serviced, maintained or adjusted in that manner.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

(2) It is a defence to a prosecution for an offence under this clause if the defendant proves that the defendant took all reasonable steps to ensure that the motor vehicle was serviced, maintained or adjusted as required by this Regulation.

#### **17 Removal or adjustment of anti-pollution devices**

(1) The owner of a motor vehicle who uses the motor vehicle, or causes or allows it to be used, is guilty of an offence if:

(a) an anti-pollution device had been fitted to the motor vehicle, and

(b) at the time of that use the device had been:

(i) removed, disconnected or impaired, or

(ii) adjusted or modified and the adjustment or modification results in the emission of excessive air impurities by the motor vehicle.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence under this clause if the defendant proves:
- (a) that the removal, disconnection, impairment, adjustment or modification was done:
    - (i) in order to service, repair or replace the anti-pollution device or to improve its efficiency with respect to minimising air pollution, or
    - (ii) in order to facilitate the use of a motor vehicle for motor racing or off-road motor sport (being a motor vehicle that immediately before that removal or other action was not registrable under the [Road Transport \(Vehicle Registration\) Act 1997](#)) and that the vehicle is to be used in that condition only in the competition itself, or
  - (b) that, at the time the offence was committed:
    - (i) the defendant had reasonable grounds to believe, and did believe, that any anti-pollution device that had been fitted to the motor vehicle continued to be fitted to the motor vehicle, and
    - (ii) the defendant took all reasonable steps to ensure that the device was properly maintained.
- (3) For the purposes of this clause, a motor vehicle **emits excessive air impurities** if it emits air impurities in the circumstances described in section 154 (2) of the Act.
- (4) In this clause, **anti-pollution device** means a prescribed anti-pollution device within the meaning of section 154 of the Act or any other device that is designed to minimise air pollution.

## **18 Notices to repair motor vehicles: section 161**

For the purposes of section 161 (5) and (7) of the Act, the prescribed label is a label in or to the effect of Form 1 in Schedule 1.

## **Division 5 Petrol**

### **19 Transfer of petrol into fuel tanks of motor vehicles**

- (1) This clause applies to all premises from which petrol is sold to the public.
- (2) The occupier of premises to which this clause applies must not, at those premises:
  - (a) transfer any petrol into a motor vehicle's fuel tank, or
  - (b) cause or allow any petrol to be transferred into a motor vehicle's fuel tank, except by means of a petrol delivery hose whose nozzle is fitted with an automatic

over-fill protection device.

Maximum penalty: 40 penalty units.

- (3) A person must not, at premises to which this clause applies, transfer petrol into the fuel tank of a motor vehicle by means of a petrol delivery hose unless the nozzle of the hose is inserted as far as it will go into the fuel tank's fill-pipe.

Maximum penalty: 8 penalty units.

- (4) In this clause, **automatic over-fill protection device** means a device:
- (a) that immediately cuts off the flow of petrol into the fuel tank when the tip of the nozzle becomes immersed in petrol, and
  - (b) that is properly installed and efficiently maintained.

## Part 4 Miscellaneous

### 20 Savings relating to domestic solid fuel heaters

- (1) Subject to subclause (2), any act, matter or thing that, immediately before the repeal of the [Clean Air \(Domestic Solid Fuel Heaters\) Regulation 1997](#), had effect under that Regulation continues to have effect under this Regulation.
- (2) A certificate of compliance or certificate of exemption issued under the [Clean Air \(Domestic Solid Fuel Heaters\) Regulation 1997](#) and in force immediately before the repeal of that Regulation is taken to be a certificate of compliance or certificate of exemption (as the case requires) for the purposes of Part 2 of this Regulation until 1 September 2003.

### 21 Savings relating to motor vehicles and motor vehicle fuels

- (1) Any act, matter or thing that, immediately before the repeal of the [Clean Air \(Motor Vehicles and Motor Vehicle Fuels\) Regulation 1997](#), had effect under that Regulation continues to have effect under this Regulation.
- (2) Without limiting the generality of subclause (1), any exemption or certificate issued under a provision of the [Clean Air \(Motor Vehicles and Motor Vehicle Fuels\) Regulation 1997](#) and in force immediately before the repeal of that Regulation is taken to have been issued under the corresponding provision of this Regulation and is subject to the same terms and conditions on which it was issued.

### 22 Amendment of [Protection of the Environment Operations \(Penalty Notices\) Regulation 1999](#)

The [Protection of the Environment Operations \(Penalty Notices\) Regulation 1999](#) is amended as set out in Schedule 2.

## Schedule 1 Forms

(Clause 18)

### Form 1

[Front of label]

#### DEFECTIVE VEHICLE

This vehicle is in a defective condition and must not be used after the date shown on the back of this label unless the repairs, reconnections or readjustments shown on the back of the label have been properly effected and the defective vehicle notice given in relation to this vehicle has been cleared.

You must not use this vehicle or allow it to be used while that notice is in force. PENALTY UP TO \$6,600. However, it is not an offence to drive the vehicle to or from a place of repair or inspection.

This label must not be removed or interfered with except by an authorised officer of the Environment Protection Authority or with the authority of such an officer. PENALTY UP TO \$6,600.

Failure to comply with the defective vehicle notice may result in this vehicle's registration under the [Road Transport \(Vehicle Registration\) Act 1997](#) being suspended or cancelled.

[Back of label]

Defect Notice No:

Registration/Chassis/Engine No of vehicle:

Date for completion of repairs, reconnections or readjustments:

The following repairs, reconnections or readjustments must be carried out:

.....  
.....  
.....

After the above repairs, reconnections or readjustments have been carried out, this vehicle must be inspected by an authorised officer of the Environment Protection Authority in order for this label to be removed. Inspection may be arranged by telephoning the following number between 9 am and 4 pm Monday to Friday:

Issued on:

Signature of authorised officer:

## Schedule 2 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999

(Clause 22)

### Schedule 1 Penalty notice offences

Omit all the matter relating to the [Clean Air \(Motor Vehicles and Motor Vehicle Fuels\) Regulation 1997](#).

Insert instead:

### Protection of the Environment Operations (Clean Air) Regulation 2002

**Column 1**

**Column 2 Column 3**

**Column 4**

<b>Provision of Regulation Officer</b>		<b>Penalty for individuals (and corporations where no penalty in Column 4)</b>	<b>Penalty for corporations</b>
Clause 9 (1)	2	\$200	\$400
Clause 15 (1): in relation to a failure to have a vertical exhaust pipe fitted so that the exhaust vent is directed away from the nearside of the vehicle	2	\$200	
Clause 15 (1): in any other case	2	\$300	
Clause 16 (1)	2	\$300	
Clause 17 (1)	2	\$300	
Clause 19 (2)	2	\$300	
Clause 19 (3)	2	\$300	